



In Chancery.

Between

ÆNEAS SAGE KENNEDY BARCLAY, - - Plaintiff,

AND

John A. Philpott, and Georgina Philpott, his wife; Samuel Price, William A. Lilley and Eliza Lilley, his wife,

Defendants.

CITY OF LONDON.

To the Honorable the Judges of the Court of Chancer :

The Bill of Complaint of Æneas Sage Kennedy Barclay, of the Village of Wallacetown, in the Township of Dunwich, in the County of Elgin, and Province of Ontario, Merchant, the above-named Plaintiff,

SHEWETH :

1. That on and prior to the ninth day of November, in the year of our Lord 1867, your Complainant was entitled to a conveyance in fee simple from one John L. Pierce, of certain lands and premises, whereof your Complainant was in, and was entitled to possession, being village lots numbers 1 and 2 on the south side of Talbot Street, and village lots numbers 11 and 12 on the north side of Argyle Street, all in Block F, in the Village of Wallacetown, in the plan and sub-division of part of lot number 12, in the eighth concession of the Township of Dunwich, in the County of Elgin, and Province of Ontario, made by William McGeorge, Deputy Provincial Land Surveyor, and registered in the Registry Office of the said County, on payment to the said Pierce of a small sum of money.

That on or about the day aforesaid, and while your complainant was so entitled to a conveyance of the said lands, the Defendant, Georgina Philpott, wife of the Defendant, John A. Philpott, contracted to buy the said lands from your Complainant for the sum of \$500—payable, \$100 down; \$200 on the first day of December, in the year of our Lord 1868; and \$200, with interest thereon, on the first day of December, in the year of our Lord 1869.

3. Your Complainant accordingly admitted the said Georgina Philpott, and she entered into possession of the said lands and premises, and continued in possession thereof.

4. The Defendant, Georgina Philpott, paid only a part of her said purchase money, she has made default in the payment of the remainder thereof, and there is now due, owing and unpaid to your Complainant in respect thereof for principal money and interest, the sum of \$265.

5. Your Complainant submits that, under the circumstances aforesaid, the said agreement with Georgina Philpott has been partly performed, so as to entitle him to a specific execution thereof.

6. In or about the month of April, in the year of our Lord 1870, the Defendant, John A. Philpott, pretending to be entitled to the said lands,—under or by virtue of the said agreement between his wife and your Complainant—by an agreement in writing signed by him, contracted with one John A. Lilley, who was acting for and on behalf of the Defendant, Eliza Tilley, to sell and convey the said lands and premises to him, the said John A. Tilley, and his heirs, for the price or sum of \$600, part of which was then paid.

Phil
there
Price
upon

Price
and
lands
deed
the
way
unde

conse
Com
Defe

again
to co
them
Willi
his h
the s
to Je
said
perfo

applic

said
on be
the p
debts
Geor
Philp
Philp

some
of th
they,
paym
and t

prete
said
lands

parag

7. In or about the month of May, in the year of our Lord 1870, the said John A. Philpott became Insolvent, within the meaning of the Insolvent Acts of 1864 and 1869, and thereupon, in pursuance of the said Acts, he assigned all his estate to the Defendant, Samuel Price, who was then, and still is an Official Assignee in the said County of Elgin, and who thereupon became, and still is the Assignee in Insolvency of the said John A. Philpott.

8. On the twenty-seventh day of January, in the year of our Lord 1872, the said Samuel Price, in order to carry out and execute the said contract with John A. Lilley, and at his instance and request, induced and procured the said John L. Pierce, in whom the legal estate in the said lands was still vested, to convey the said lands to the Defendant, Eliza Lilley and her heirs, by a deed bearing date on the day last aforesaid, and thereupon the said Eliza Lilley and her husband, the Defendant, William A. Lilley, reconveyed the same to the said Samuel Price and his heirs, by way of Mortgage, to secure the payment of the remainder of the said purchase money, payable under the contract with John A. Philpott.

9. The said conveyance to the said Eliza Lilley was made without your Complainant's consent, and was procured by the said Samuel Price and John A. Lilley, in order to deprive your Complainant of his lien for the balance of the purchase money due and owing to him by the Defendant, Georgina Philpott.

10. Subsequently your Complainant filed his Bill of Complaint in this Honorable Court against the said John L. Pierce, William A. Lilley, Eliza Lilley and Samuel Price, to compel them to convey the said lands and premises to him and his heirs, free from encumbrances created by them or any of them, and this Honorable Court did thereupon decree and order the Defendants, William A. Lilley, Eliza Lilley and Samuel Price, to convey the same to your Complainant and his heirs, and did declare that such decree was to be without prejudice to the rights, if any, of the said Defendants in the said suit, or any of them, in respect of the alleged sale by the Plaintiff to John A. Philpott, in the pleadings in the said suit mentioned, or of the rights, if any, of the said Defendants in the said suit, or any of them, to enforce against the Plaintiff specific performance of the said alleged agreement.

11. The said lands were duly conveyed to your Complainant pursuant to the said decree.

12. Your Complainant has made, or caused to be made to the said Georgina Philpott application specifically to perform the said agreement, but she has not done so.

13. The Defendants, Samuel Price and Eliza Lilley, sometimes pretend and allege that the said purchase of the said lands by the Defendant, Georgina Philpott, was in fact made by and on behalf of her husband, the Defendant, John A. Philpott, and for his sole use and benefit; that the purchase was so made while the said John A. Philpott was Insolvent and unable to pay his debts in full, and that the agreement with your Complainant was made in the name of the said Georgina Philpott, with intent and in pursuance of a scheme on the part of the said John A. Philpott and Georgina Philpott to defeat, hinder and delay the creditors of the said John A. Philpott in the recovery of their debts against him.

14. The Defendants, Samuel Price and Eliza Lilley, at other times pretend that under some deed, contract or assignment, they, or one of them, is entitled to all the estate and interest of the said Georgina Philpott in the said lands, and that for some or one of the reasons aforesaid, they, or one of them, is entitled to a conveyance of the said lands from your Complainant, upon payment of the principal money and interest due and owing to your Complainant as aforesaid, and they forbid your Complainant to convey the said lands to her.

15. The Defendant, Georgina Philpott, denies the truth of the said allegations and pretences of the Defendants, Samuel Price and Eliza Lilley, and insists that upon payment of the said balance of her purchase money and interest she will be entitled to a conveyance of the said lands.

16. Your Complainant is ready and willing to perform the said contract in the second paragraph mentioned in all things on his part.



Your Complainant therefore prays :—

1. That the said agreement between your Complainant and the Defendant, Georgina Philpott, may be specifically performed, your Complainant hereby offering to perform the same on his part and to convey the said lands as this Honorable Court may direct.

2. That your Complainant may be paid the said sum of \$265 and subsequent interest, and his costs of this suit, and in default thereof that the said agreement with the Defendant, Georgina Philpott, may be vacated and rescinded, and the rights of the Defendants in the said lands foreclosed.

3. That for the purposes aforesaid all proper directions may be given and accounts taken.

4. That your Complainant may have such further and other relief in the premises as to your Lordships may seem meet.

And your Complainant will ever pray, &c.